



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 28 2006

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike Morgan  
General Manager Pipelines/Asset Optimization  
Suncor Energy (U.S.A.) Inc.  
7800 East Orchard, Suite 300  
Greenwood Village, CO 80111

Re: Fuel Waiver for Diesel Sulfur and Gasoline Sulfur

Dear Mr. Morgan:

This is in response to your February 3, 2006 letter in which you request, on behalf of Suncor Energy (U.S.A.) Inc. (Suncor), that the United States Environmental Protection Agency (EPA) waive, pursuant to 40 C.F.R. § 80.561, certain ultra low sulfur diesel fuel (ULSD) requirements under 40 C.F.R. § 80.540. This waiver request concerns the Suncor refineries located in Denver and Commerce City, Colorado, that produce fuel for use in the geographic phase-in area (GPA) as defined in 40 C.F.R. § 80.215, and primarily for use in the State of Colorado.

Suncor has opted, under 40 C.F.R. § 80.540, to meet certain ULSD requirements that are more stringent than otherwise would apply, in exchange for receiving additional time to meet certain gasoline sulfur standards (the gasoline-for-diesel option). Under this option, a GPA-refiner receives two additional years, through 2008, to produce gasoline that meets less-stringent GPA sulfur standard, provided that the refiner's motor vehicle diesel fuel production meets certain requirements. One such requirement is that each averaging period at least 95% of the refiner's motor vehicle diesel fuel must meet the 15 parts per million ULSD standard.

Your February 3, 2006 letter requests that EPA waive the requirement that Suncor must produce 95% of its motor vehicle diesel fuel as ULSD during the June 1, 2006, through June 30, 2007, compliance period (the 2006-2007 compliance period) in order to remain eligible for the gasoline-for-diesel option. Your letter states that Suncor may not be able to begin producing diesel fuel meeting the ULSD standard until July 1, 2006, and that this delay could prevent Suncor from meeting the 95% ULSD production requirement for the 2006-2007 compliance period. As a consequence, absent a waiver, Suncor may not remain eligible for the gasoline-for-diesel option unless it ceases production of, or significantly reduces the volume of, motor vehicle diesel fuel it produces during June 2006. According to your letter, Suncor supplies a substantial portion of the highway diesel fuel used in Colorado, so that such a curtailment in the

production of highway diesel fuel by Suncor could result in shortages of highway diesel fuel in Colorado.

EPA recognizes the environmental benefits of ULSD. However, pursuant to 40 C.F.R. § 80.561, and subject to the conditions and limitations contained in this letter, EPA today is waiving the requirement, under 40 C.F.R. § 80.540, that 95% of the motor vehicle diesel fuel produced by Suncor at its Commerce City refinery must meet the ULSD standard during the 2006-2007 compliance period in order to remain eligible for the gasoline-for-diesel option. This waiver is based on information provided by Suncor and the following EPA findings.

- As a result of Hurricanes Katrina and Rita, which are extreme, unusual and unforeseen circumstances that are outside the control of Suncor, and despite exercising prudent planning, diligence and due care, Suncor may not be able to meet the ULSD requirements by June 1, 2006. Furthermore, Suncor has taken all reasonable steps to minimize this delay.
- EPA believes that unless this waiver is granted, a motor vehicle diesel fuel supply shortage may occur in the State of Colorado. Therefore, it is in the public interest to grant this waiver.
- Suncor has demonstrated that the requirements for motor vehicle diesel fuel will be expeditiously achieved.
- Suncor has agreed to make up any air quality detriment resulting from this waiver.
- Based on Suncor's representations regarding the increased expenses necessary to produce ULSD that result from the effects of Hurricanes Katrina and Rita on the cost of equipment and labor, and the expenses of making up any air quality detriment associated with this waiver, Suncor will not receive an economic benefit from this waiver.

This waiver is subject to the following conditions and limitations, all of which apply to Suncor's Commerce City refinery.

1. Suncor shall continue to make all reasonable efforts to produce diesel fuel meeting the ULSD standard by June 1, 2006. If it cannot produce ULSD by that date it shall do so by the earliest date possible, but no later than by July 1, 2006.

2. Suncor shall make all reasonable efforts to produce 95% of its motor vehicle diesel fuel to meet the ULSD standard during the 2006-2007 compliance period, but in no event shall this percentage be less than 90%.

3. Suncor shall comply with the requirement of 40 C.F.R. § 80.540(e) that the volume of motor vehicle diesel fuel meeting the ULSD produced during the 2006-2007 compliance period shall be at least 92% of its baseline volume.

4. Suncor shall purchase and retire sufficient diesel credits, generated under 40 C.F.R. § 80.531, to offset the deficit of ULSD, if any, under 40 C.F.R. § 80.540 resulting from this waiver. These credits must be purchased from within Credit Trading Area 4 as defined in 40 C.F.R. § 80.531, except that early diesel credits may be purchased from any Credit Trading Area. These credits must be generated during the 2006-2007 compliance period, if possible, and not later than the July 1, 2007 through June 30, 2008 compliance period (the 2007-2008 compliance period). Credits from the 2007-2008 compliance period shall be discounted at the rate of two credits retired for each credit of deficit.

5. Suncor shall take all steps necessary to assure that each truck loading terminal storage tank that contains any motor vehicle diesel fuel produced by Suncor meets the ULSD standard by September 1, 2006, by sampling and testing the diesel fuel contained in each such storage tank and implementing additional diesel product transition measures where necessary to achieve this requirement.

6. Suncor shall take steps to assure that, beginning June 1, 2006, the labeling requirements of 40 C.F.R. § 80.570(b) are met with regard to any motor vehicle diesel fuel produced by Suncor that does not meet the ULSD standard.

7. Suncor shall submit reports to EPA demonstrating compliance with the requirements of this waiver as follows: no later than December 1, 2006, with the requirements of Paragraphs 5 and 6; no later than August 1, 2007, with the requirements of Paragraphs 1 through 3 and the requirements related to 2006-2007 credits of Paragraph 4; and no later than August 1, 2008 with the requirements related to 2007-2008 credits of Paragraph 4. These reports shall be sent by overnight delivery service to the following address:

Adam M. Kushner, Director  
Air Enforcement Division  
Mail Code 2242A  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

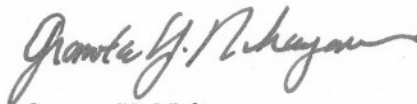
If Suncor fails to comply with any term or condition of this waiver it shall be *void ab initio* and Suncor will be subject to penalties for any violations 40 C.F.R. Part 80, Subparts H and I that it commits.

This waiver is conditional upon the truthfulness, accuracy and completeness of Suncor's disclosures and representations to EPA, including but not limited to the representations made in the February 3, 2006 letter.

This waiver does not preclude any action by EPA to address past or future violations of the Clean Air Act or regulations promulgated thereunder that are unrelated to this waiver.

If you have questions, please contact Adam Kushner of my staff at 202-564-7979.

Sincerely,

A handwritten signature in cursive script, appearing to read "Granta Y. Nakayama".

Granta Y. Nakayama  
Assistant Administrator